



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

HMO/150406

PRELIMINARY RECITALS

Pursuant to a petition filed July 01, 2013, under Wis. Stat. § 49.45(5)(a), and Wis. Admin. Code § HA 3.03, to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on August 19, 2013, at Kenosha, Wisconsin.

The issue for determination is whether the Department of Health Services, Division of Health Care Access and Accountability (DHCAA) correctly denied Petitioner's request for orthodontic services.

NOTE: The record was held open to give Ms. Miller an opportunity to submit a copy of the stated policy. It has been marked as Exhibit 3 and entered into the record. The record was also held open to allow Petitioner's mother to submit a dental chart from Crawford Pediatric and Adult Orthodontics. The chart has been marked as Exhibit 4 and entered into the record.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Interpreter: [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Lucy Miller, Nurse Consultant
Division of Health Care Access And Accountability
1 West Wilson Street
Madison, WI 53703

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is an eleven year-old resident of Kenosha County. (Exhibit 2)
2. Petitioner's Salzmann Index Score is 18. (Exhibit 2)
3. On an unspecified date Petitioner's HMO denied her request for orthodontic services. (Exhibit 2)
4. Petitioner's mother filed a request for fair hearing on Petitioner's behalf, that was received by the Division of Hearings and Appeals on June 28, 2013. (Exhibit 1)

DISCUSSION

Under the discretion allowed by *Wis. Stat., §49.45(9)*, the Department of Health Services (DHS) requires MA (Medical Assistance) recipients to participate in HMOs. *Wis. Admin. Code, §DHS 104.05(2)(a)*. MA recipients enrolled in HMOs must receive medical services from the HMOs' providers, except for referrals or emergencies. *Wis. Admin. Code, §DHS 104.05(3)*.

The criteria for approval by a managed care program contracted with the DHS are the same as the general MA criteria. See *Wis. Admin. Code, §DHS 104.05(3)* which states that HMO enrollees shall obtain services "paid for by MA" from the HMO's providers. The department must contract with the HMO concerning the specifics of the plan and coverage. *Wis. Admin. Code, § DHS 104.05(1)*.

If the enrollee disagrees with any aspect of service delivery provided or arranged by the HMO, the recipient may file a grievance with DHS or appeal to the Division of Hearings and Appeals.

Just as with regular MA, when the department denies a grievance from an HMO recipient, the recipient can appeal the DHS's denial within 45 days. *Wis. Stat., §49.45(5)*, *Wis. Admin. Code, § DHS 104.01(5)(a)3*.

When determining whether to approve any service, the HMO, as with the Division of Health Care Access and Accountability (DHCAA), must consider the generic prior authorization review criteria listed at *Wis. Admin. Code, §DHS §107.02(3)(e)*:

(e) *Departmental review criteria*. In determining whether to approve or disapprove a request for prior authorization, the department shall consider:

1. The medical necessity of the service;
2. The appropriateness of the service;
3. The cost of the service;
4. The frequency of furnishing the service;
5. The quality and timeliness of the service;
6. The extent to which less expensive alternative services are available;
7. The effective and appropriate use of available services;
8. The misutilization practices of providers and recipients;
9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including medicare, or private insurance guidelines;
10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
12. The professional acceptability of unproven or experimental care, as determined by consultants to the department.

"Medically necessary" means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and

(b) Meets the following standards:

1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
3. Is appropriate with regard to generally accepted standards of medical practice;
4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
6. Is not duplicative with respect to other services being provided to the recipient;
7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Admin. Code, §DHS 101.03(96m)

For any prior authorization request to be approved, the Medicaid recipient must show that the requested service satisfies the generic prior authorization criteria listed above. At their core, those criteria include the requirement that the service be medically necessary. *Id.*

The Division of Health Care Access and Accountability finds orthodontics to be medically necessary when:

1. There is a severe and handicapping malocclusion as determined by a minimum Salzmann Index Score of 30 or greater. See *MA Provider Handbook*, p. B5.2-070; see also *ForwardHealth's on-line provider handbook, topic #2909*. The Salzmann Index measures the misalignment of teeth.
2. There are extenuating circumstances where, even though the Salzmann Index Score is under 30, there is a severe handicapping malocclusion, i.e. the malocclusion prevents the person from eating or causes severe pain.
3. The request is for minor treatment (1-4 teeth) for limited or interceptive orthodontic treatment using fixed or removable appliances, i.e. using spacers in a younger child to prevent a malocclusion.
4. The request is the result of a personality or psychological condition and a referral is made by a mental health professional.

ForwardHealth's on-line provider handbook, topic #2909.

"Orthodontic treatment is *not* authorized for cosmetic reasons." *Id.*

Petitioner's mother did not dispute the DHCAA's determination that Petitioner's Salzmann Index score is 18. There is no documentation in the record, nor any assertion of any extenuating circumstances, such as pain or an inability to eat due to the overcrowding of some of Petitioner's teeth. Further, it appears that Petitioner's request is for full orthodontia to correct a malocclusion, not a request for minor treatment to 1-4 teeth in order to prevent a serious malocclusion. Petitioner's mother asserts in her appeal, that Petitioner needs the orthodontic work because she is embarrassed by her teeth and because she is being bullied at school. However, there is no referral from a mental health professional in the record. As such, the DHCAA's decision to deny authorization for orthodontic work must be upheld.

Petitioner should note, however, that nothing prevents the petitioner's orthodontist from filing a new request for authorization if a mental health professional makes a referral for orthodontic services, if the petitioner's teeth continue to shift or if evidence of extenuating circumstances is documented in the request.

CONCLUSIONS OF LAW

That the DHCAA correctly denied Petitioner's request for orthodontic services.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

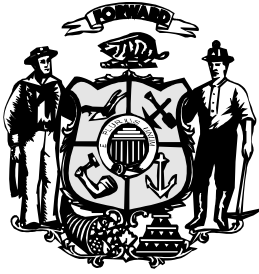
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 19th day of September, 2013.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 19, 2013.

Division of Health Care Access And Accountability